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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

ISMAEL PEREZ GARCIA and
JULIETA HERNANDEZ SANTIAGO

Debtor(s).

) Case No.: 2:14-bk-19679-BR

) Chapter 7

) **EX PARTE MOTION TO REOPEN**
) **CHAPTER 7 CASE UNDER 11 U.S.C. §**
) **350(b) FOR LIMITED PURPOSE;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES; DECLARATION OF**
) **EDWARD WOLKOWITZ IN SUPPORT**
) **THEREOF**

) [NO HEARING REQUIRED]

TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE
FOR THE CENTRAL DISTRICT OF CALIFORNIA, DEBTOR, DEBTOR'S ATTORNEY,
AND ALL PARTIES IN INTEREST:

The Ex Parte Motion of the United States Trustee ("U.S. Trustee") to Reopen Chapter 7 Case under 11 U.S.C. § 350(b) for Limited Purpose is based on the following:

1. Ismael Perez Garcia and Julieta Hernandez Santiago, debtors, ("Debtors") commenced this Chapter 7 case by the filing of a voluntary Chapter 7 petition on May 16, 2014.

2. The Chapter 7 trustee appointed in the instant case, Edward M. Wolkowitz, ("Trustee") filed a Final Report of trustee in a no asset case on June 23, 2014.

1 3. Subsequent to the closing of the case, the Trustee was approached by a real estate
2 investor who is willing to purchase the real estate property located at 1335 Ballista Avenue, La
3 Puente, CA 91744 ("Property") despite the Property not having equity. The sale of the Property
4 would bring to the estate about \$17,500 in proceeds, which would be property of the estate and
5 Trustee seeks to reopen the case to administer the Property.

6 4. Thus, the Trustee seeks an Order authorizing the reopening of this case to administer
7 the Property. The filing fee will be included for payment in Trustee's Final Report along with any
8 other Court costs.

9 5. Accordingly, the U.S. Trustee needs to reopen the instant case to allow the Trustee
10 to administer the Property after being approached by a real estate investor subsequent to the
11 issuance of the No Asset Report.

12 DATED: August 29, 2014

13 Respectfully Submitted,

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15 PETER C. ANDERSON
16 UNITED STATES TRUSTEE

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18 By: Dare Law
19 Attorney for the United States Trustee

MEMORANDUM OF POINTS AND AUTHORITIES

I. THE COURT MAY ORDER THE DEBTOR'S CASE REOPENED UNDER 11 U.S.C. § 350.

The closing and reopening of cases is governed by Title 11 U.S.C. § 350 which provides in pertinent part:

(b) A case may be reopened in the court in which such case was closed to administer assets, to afford relief to the debtor, or for other cause.

11 U.S.C. § 350(b). The decision to reopen a case rests within the sound discretion of the bankruptcy court. *See In re McDonald*, 161 B.R. 697 (D. Kan. 1993).

In this case, cause exists to reopen the case. As stated above and in the attached Declaration of Edward Wolkowitz ("Declaration"), the Chapter 7 trustee appointed in the instant case was approached by a real estate investor who is willing to purchase the real property subsequent to the issuance of Debtor's discharge.² As a result, the United States Trustee requests that this Court reopen the Debtors' case so that the Trustee can administer the sale of the Property. Accordingly, good cause exists for this Court to reopen this case.

II. THIS EX PARTE MOTION IS APPROPRIATE FOR THE MINISTERIAL ACT OF REOPENING THE DEBTOR'S CASE.

Reopening a case, by itself, has no independent legal significance, is a ministerial or mechanical act, and determines nothing with respect to the merits of the case. *See In re Germaine*, 152 B.R. 619, 624 (9th Cir. BAP 1993). The request to reopen can be brought ex parte and without notice. *See In re Daniels*, 34 B.R. 782, 784 (9th Cir. BAP 1983); *In re Abbott*, 183 B.R. 198, 200 (9th Cir. BAP 1995).

Similarly, the Ninth Circuit Bankruptcy Appellate Panel in *In re Menk*, 241 B.R. 896, 914 (9th Cir. BAP 1999) noted that although the reopening procedure described by Federal Rule of Bankruptcy Procedure 5010 requires a motion, it does not require that notice be given to anyone. The *Menk* court further noted that § 350(b) does not mention a requirement of notice and a hearing

² See Declaration of Edward Wolkowitz ("Wolkowitz Declaration").

1 that connotes the statutory need to permit a contest. Accordingly, the *Menk* court held that a motion
2 to reopen can be considered ex parte and without a hearing. *Id.*

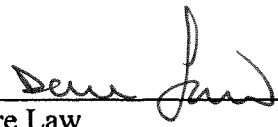
3 Based on the foregoing, ex parte relief is appropriate in this case.

4 **III. CONCLUSION**

5 Based on the foregoing, the United States Trustee respectfully requests that the court reopen
6 the instant case to allow the Trustee to administer the real property subsequent to the issuance of the
7 discharge in the instant case.

8 DATED: August 29, 2014

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10 PETER C. ANDERSON
UNITED STATES TRUSTEE

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12 By: 
13 Dare Law
14 Attorney for the United States Trustee
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Declaration of Edward Wolkowitz

Declaration of Edward Wolkowitz

DECLARATION OF EDWARD WOLKOWITZ

I, EDWARD M. WOLKOWITZ, hereby declare as follows:

1. I am over the age of eighteen years, and an attorney licensed to practice before this Court. If called upon to testify I could and would do so competently. I was the duly appointed and acting Chapter 7 trustee in the case of In Re Ismael Perez Garcia and Julieta Hernandez Santiago, Case No. 2:14-bk-19679- BR. I have personal knowledge of the facts set forth herein, and based on that personal knowledge, I assert that all facts are true and correct to the best of my knowledge.

2. I was appointed Chapter 7 Trustee by the United States Trustee when the case was filed on May 16, 2014 and accepted such appointment thereafter.

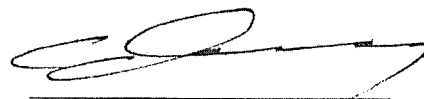
3. I conducted the examinations of the Debtors in accordance with 11 U.S.C. §341(a) of the Bankruptcy Code on June 19, 2014. After examination of the Debtors, and after a valuation from my broker, it was confirmed that there was no property available for distribution from the estate over and above that exempted by law. Therefore I filed a Trustee's No Asset Report on June 23, 2014.

4. Thereafter, I was approached by a real estate investor who is willing to purchase the real estate property located at 1335 Ballista Avenue, La Puente, CA 91744 despite it not having any equity.

5. Accordingly, I notified the United States Trustee of the potential asset and asked the United States Trustee to petition the Court to reopen the instant case to allow the United States Trustee to appoint a chapter 7 trustee in this case to administer the real property and to take necessary action to administer it.

I declare under penalty of perjury under the Laws of the United States of America that the foregoing facts are true and correct.

Executed on August 29, 2014, at Los Angeles, California.


Edward M. Wolkowitz

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

915 Wilshire Boulevard, Suite 1850, Los Angeles, California 90017-3560

A true and correct copy of the foregoing document entitled (*specify*): **Ex-Parte Motion to Reopen Chapter 7 Case Under 11 U.S.C. § 350(b) for Limited Purpose; Memorandum of Points and Authorities; Declaration of Edward Wolkowitz in Support Thereof** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On August 29, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**: On August 29, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on August 29, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 29, 2014
Date

Stephanie Hill
Print Name

Stephanie Hill
Signature

ADDITIONAL SERVICE INFORMATION

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")**

<u>Name</u>	<u>Capacity</u>	<u>Email Address</u>
Bridget Howze	Attorney for Debtor(s)	b_howze@yahoo.com
United States Trustee (LA)		ustpreion16.la.ecf@usdoj.gov
Edward M Wolkowitz (TR)	Trustee	emwtrustee@lnbrb.com, ewolkowitz@ecf.epiqsystems.com

SEE NEF FOR CONFIRMATION OF ELECTRONIC TRANSMISSION TO THE U.S. TRUSTEE AND ANY TRUSTEE IN THIS CASE, AND TO ANY ATTORNEYS WHO RECEIVE SERVICE BY NEF.

2. **SERVED BY U.S. MAIL**

Debtor:

Ismael Perez Garcia
Julieta Hernandez Santiago
562 S. Backton Avenue
La Puente, CA 91744

3. **SERVED BY FEDERAL EXPRESS OVERNIGHT MAIL** (Pursuant to the UST's agreement with the Bankruptcy Judge's Courtesy Copy was mailed Federal Express overnight mail to the following address.)

Judge's Copy
Honorable Barry Russell
U.S. Bankruptcy Court
255 E. Temple Street, Room 940
Los Angeles, CA 90012
Attn: Mail Room Clerk-Judges Copies